

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Thursday, January 20, 2022**

**Hearing Room 1675**

1:30 PM

**2:00-000000**

**Chapter**

**#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

**Video/audio web address: <https://cacb.zoomgov.com/j/1613729864>**

**ZoomGov meeting number: 161 372 9864**

**Password: 738179**

**Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666**

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For more information on appearing before Judge Kwan by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Robert N. Kwan's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**2:13-14135 Art and Architecture Books of the 21st Century**

**Chapter 11**

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

**#1.00** CONT'D TRIAL RE: Application of Sam S. Leslie, plan agent, for issuance of order approving the issuance of writ of execution and appointment of plaintiff as substitute custodian for U.S. Marshal in furtherance of execution of writ and notice of levy; and for order approving sale of artworks free and clear of any claim of lien or interest fr. 12/2/21, 12/3/21, 12/10/21, 1/13/22, 1/14/22

*(Closing Arguments)*

Docket 713

**Tentative Ruling:**

Updated tentative ruling as of 1/14/22. The property whose ownership in dispute, the alleged Banksy artwork, is an unusual type of property, street art. The parties focus on general property law and landlord-tenant law, but have not addressed the specific unique characteristics of the property as perhaps a new category of property, street-art. See Salib, "The Law of Banksy: Who Owns Street Art?," 82 U. Chi. L. Rev. 2293 (2015); Carron, "Street Art: Is Copyright for 'Losers'? A Comparative Prospective on the French and American Legal Approach to Street Art," 91 N.Y. St. B.J. 34 (Nov. 2019). In order to determine the parties' ownership claims, the court expects to consider general legal principles regarding acquisition and ownership of property, such as California Civil Code Section 1000. See also, 13 Witkin, Summary of California Law, Personal Property, Section 28 (11th ed. 2021); 3 Miller and Starr California Real Estate, Section 9.2 (4th ed. 2021) (property as a "bundle of rights"); see also, 3 Miller and Starr California Real Estate 4th, Section 9.42 (tests for whether an item is a fixture). 400 South La Brea argues that it owns the Banksy as being on a fixture per the lease. The plan agent argues that Ace Museum had owned it subject to his judgment levy because it is a trade fixture or removed graffiti. Is the Banksy mere graffiti, or something more? These are some of the issues that the court is considering. Appearances are required on 1/14/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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**CONT... Art and Architecture Books of the 21st Century**

**Chapter 11**

Prior tentative ruling as of 1/6/22. No tentative ruling on the merits will be issued for trial. Appearances are required on 1/14/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. Regarding the issue of whether the court may enter a final judgment on the plan agent's claim to the Banksy artwork, the court agrees with the 400 South La Brea Defendants that the answer is no because the plan agent's claim is a noncore but otherwise related to the bankruptcy case subject to the restrictions of *Stern v. Marshall*, 564 U.S. 462 (2011). The plan agent's claim is based on California state law collection procedures to enforce the judgment entered by this court in this adversary proceeding against defendant Ace Museum through a judgment levy on property of the judgment debtor, Ace Museum, which is a nonbankruptcy debtor party, but legal title to the levied property is contested by third parties, the 400 South La Brea Defendants. Pursuant to California Code of Civil Procedure 720.170(d), the court will conduct a hearing to determine the third party claim of the 400 South La Brea Defendants to the property levied upon by the reorganized debtor as the judgment creditor of defendant Ace Museum. The dispute is whether the property belongs to Ace Museum subject to the reorganized debtor's judgment levy or to the 400 South La Brea Defendants, that is, the dispute is over ownership as to nonbankruptcy debtor parties. Thus, the court disagrees with the plan agent's characterization of his claim being a core proceeding over whether the property was part of the bankruptcy estate under 11 U.S.C. 541. Regardless whether the 400 South La Brea Defendants have asserted counterclaims in this adversary proceeding, this particular dispute involving the Banksy artwork is noncore because the action at issue does not "stem from the bankruptcy itself, nor would it necessarily be resolved in the claims allowance process." *Stern v. Marshall*, 564 U.S. at 499. Absent consent to the bankruptcy court's authority to enter a final judgment on the matter, which is not manifested here, the bankruptcy court may only proceed with hearing the dispute by issuing proposed findings of fact and conclusions of law for review and approval by the district court, which has the authority to enter a final judgment. *Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25, 35-37 (2014).

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The court will discuss scheduling of the trial with the parties and conducting the trial remotely.

Appearances are required on 4/7/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

<b>Party Information</b>
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**Debtor(s):**

Art and Architecture Books of the

Represented By  
Thomas M Geher  
David W. Meadows  
Jerome S Cohen  
Carolyn A Dye  
Alan I Nahmias

**Defendant(s):**

Ace Gallery New York Corporation,

Represented By  
Alan W Forsley

Douglas Christmas

Represented By  
Alan W Forsley

Ace Gallery New York, Inc., a

Represented By  
Alan W Forsley

ACE MUSEUM, a California

Represented By  
Alan W Forsley

400 S La Brea, LLC a California

Represented By  
Michael W Vivoli  
Ronald Rus  
Fahim Farivar  
Brian L Davidoff  
Keith Patrick Banner

Jennifer Kellen

Represented By  
J. Bennett Friedman

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**CONT... Art and Architecture Books of the 21st Century Chapter 11**

Michael D. Smith	Represented By Brian L Davidoff
Kamran Gharibian	Represented By Brian L Davidoff
Daryoush Dayan	Represented By Brian L Davidoff
Cathay Bank, a California	Represented By Ekwan E Rhow Elliot C Harvey Schatmeier
Jennifer Kellen	Represented By Michael D Sobkowiak

**Plaintiff(s):**

THE OFFICIAL COMMITTEE OF	Represented By Victor A Sahn Daniel A Lev David J Richardson Asa S Hami Jessica Vogel
Official Committee Of Unsecured	Represented By David J Richardson Victor A Sahn
Sam Leslie	Represented By Victor A Sahn Carolyn A Dye David J Richardson Jason Balitzer Steven Thomas Stephen Sorensen